

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

STEVEN M. ZEKERT,

Plaintiff,

v.

FIELDWORKS, LLC., et al.,

Defendants.

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No. 4:20-cv-471-RWS

**MEMORANDUM AND ORDER**

This matter is before the Court upon the motion of *pro se* plaintiff Steven M. Zekert for leave to proceed *in forma pauperis* in this employment discrimination action. Having reviewed the financial information set forth in the motion, the Court finds that plaintiff is unable to pay the filing fee. The motion will therefore be granted. In addition, for the reasons explained below, the Court will dismiss the individual defendant from this action, and direct the Clerk of Court to issue process upon the complaint as to defendant FieldWorks, LLC.

**The Complaint**

Plaintiff filed the instant complaint against his former employer, FieldWorks LLC, and his former supervisor, Adam Mikos. He alleges he suffered employment discrimination on the basis of disability in violation of the Americans with Disabilities Act (“ADA”). Plaintiff signed and dated the complaint on March 30, 2020, and it was filed in this Court on April 1, 2020. Attached to the complaint is, *inter alia*, a copy of a right to sue letter from the Equal Employment Opportunity Commission (“EEOC”) that appears to be dated December 31, 2019, although the date stamp is faint. Briefly, plaintiff alleges that after he told Mikos he was a

recovering alcoholic, he was wrongfully accused of drinking on the job and being intoxicated, and was fired. He seeks reinstatement, and monetary relief.

### **Discussion**

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. Here, plaintiff filed an administrative charge on December 31, 2019 setting forth the same allegations set forth in the complaint, and he attached a copy of an EEOC right to sue letter that appears to bear that same date, which is within 90 days of the date of the instant complaint. It therefore appears that plaintiff has exhausted his administrative remedies and timely filed this action. Accordingly, the Court will allow this case to proceed against FieldWorks, LLC. However, the Court will dismiss Mikos from this case because individual employees cannot be held liable under the ADA. *See Alsbrook v. City of Maumelle*, 184 F.3d 999, 1005 n. 8 (8th Cir. 1999).

Plaintiff has also filed a motion to appoint counsel. The Court will deny the motion at this time, without prejudice. “A pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case.” *Stevens v. Redwing*, 146 F.3d 538, 546 (8th Cir. 1998). When determining whether to appoint counsel for an indigent litigant, the Court considers factors such as the complexity of the case, the ability of the *pro se* litigant to investigate the facts, the existence of conflicting testimony, and the ability of the *pro se* litigant to present his claims. *Id.*

After considering these factors, the Court concludes that the appointment of counsel is unwarranted at this time. Based upon the complaint, it does not appear that this case is factually or legally complex, nor does it appear that plaintiff will be unable to investigate the facts. In addition, the motion is premature, the defendant has yet to be served with process, and discovery

has not begun. The Court will therefore deny the motion for the appointment of counsel without prejudice, and will entertain future motions for the appointment of counsel, if appropriate, as this litigation progresses.

Accordingly,

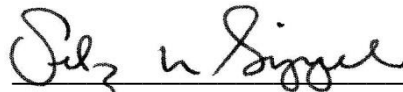
**IT IS HEREBY ORDERED** that plaintiff's motion for leave to proceed *in forma pauperis* (ECF No. 2) is **GRANTED**.

**IT IS FURTHER ORDERED** that plaintiff's Motion to Appoint Counsel (ECF No. 3) is **DENIED** without prejudice.

**IT IS FURTHER ORDERED** that Adam Mikos is **DISMISSED** from this action. A separate order of partial dismissal will be entered herewith.

**IT IS HEREBY CERTIFIED** that an appeal from this partial dismissal would not be taken in good faith.

**IT IS FURTHER ORDERED** that the Clerk of Court shall issue process or cause process to issue upon defendant FieldWorks LLC via its registered agent InCorp Services, Inc., 2847 S. Ingram Mill Road, Suite A-100, Springfield, MO 65804.

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", written over a horizontal line.

RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of April, 2020.